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Protecting human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General*

Summary

The report provides an overview of United Nations action in implementation of resolution 58/187. It notes that the Office of the High Commissioner for Human Rights has maintained its dialogue with the Counter-Terrorism Committee (CTC) of the Security Council and continues to recommend that CTC consider the human rights impact of counter-terrorism measures. It reflects the view of the High Commissioner that, over the long term, a commitment to uphold respect for human rights and rule of law will be one of the keys to success in countering terrorism. The High Commissioner, while stressing that States have not only the right, but also the duty to secure the right to life and other rights through effective counter-terrorism measures, has highlighted the central role of the judiciary in reviewing such measures taken by Governments.

The United Nations human rights special procedures and treaty bodies continue to pay close attention to the protection of human rights and fundamental freedoms while countering terrorism, within their respective mandates and resources. In a joint statement issued on 25 June 2004, the special rapporteurs and representatives, independent experts and chairpersons of the working groups of the special procedures of the Commission on Human Rights strongly voiced their unequivocal condemnation of terrorism in all its forms. At the same time, they reaffirmed "their individual and collective determination to monitor, each within the framework of his or her mandate, those policies, legislation, measures and practices developed by States in the name of the fight against terrorism, with a view to ascertaining that they

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are consistent with international human rights standards". Several of the human rights treaty bodies have also continued to address the protection of human rights while countering terrorism.

The report notes the appointment by the Commission on Human Rights in July 2004 of an independent expert, for a period of one year, to assist the High Commissioner in this area and to submit a report, through the High Commissioner, to the Commission at its sixty-first session on ways and means of strengthening the promotion and protection of human rights and fundamental freedoms while countering terrorism. It expresses the hope that this will lead to a more integrated and coherent understanding of the issue.

I. Introduction

1. The General Assembly, in resolution 58/187, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law, and called upon States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism. It welcomed the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee (CTC) and relevant bodies for the promotion and protection of human rights, and encouraged the Security Council and CTC to continue to develop the cooperation with relevant human rights bodies, in particular with the Office of the High Commissioner for Human Rights (OHCHR).

2. The Assembly requested all relevant special procedures and mechanisms of the Commission on Human Rights, as well as the United Nations human rights treaty bodies, to consider, within their mandates, the protection of human rights and fundamental freedoms in the context of measures to combat terrorism and to coordinate their efforts, as appropriate, in order to promote a consistent approach on this subject. It encouraged States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and to consider the recommendations of the special procedures and mechanisms of the Commission on Human Rights and the relevant comments and views of the human rights treaty bodies.

3. The General Assembly welcomed the publication by the Office of the High Commissioner for Human Rights (OHCHR) of the "Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights while Countering Terrorism" and requested the High Commissioner to update and publish it periodically. It further requested the High Commissioner, making use of existing mechanisms, to continue: (a) to examine the question of the protection of human rights and fundamental freedoms while countering terrorism, taking into account reliable information from all sources; (b) to make general recommendations concerning the obligation of States to promote and protect human rights and fundamental freedoms while taking actions to counter terrorism; and (c) to provide assistance and advice to States, upon their request, on the protection of human rights and fundamental freedoms while countering terrorism, as well as to relevant United Nations bodies.

4. The Assembly requested the High Commissioner, taking into account the views of States, to submit a study to the General Assembly on the extent to which the human rights special procedures and treaty monitoring bodies are able, within their existing mandates, to address the compatibility of national counter-terrorism measures with international human rights obligations in their work. The study is submitted separately (see A/59/__). Finally, the Assembly requested the Secretary-General to submit a report on the implementation of the resolution to the Commission on Human Rights at its sixtieth session and to the Assembly at its fifty-ninth session. The present document is the report of the Secretary-General.

5. The Commission on Human Rights, in resolution 2004/87, in addition to reaffirming the provisions of Assembly resolution 58/187, decided to designate, from within existing resources, for a period of one year, an independent expert to

assist the High Commissioner in the fulfilment of the mandate provided for in the resolution and, taking fully into account the study requested in resolution 58/187, as well as the discussions in the Assembly and the views of States thereon, to submit a report, through the High Commissioner, to the Commission at its sixty-first session on ways and means of strengthening the promotion and protection of human rights and fundamental freedoms while countering terrorism. In July 2004, the Chairman of the Commission on Human Rights appointed Professor Robert Goldman (United States of America) as the independent expert pursuant to resolution 2004/87.

II. The Security Council's Counter-Terrorism Committee

6. OHCHR has continued its dialogue with CTC, including through meetings and exchanges of information between staff. OHCHR submits regular updates to the Chair of CTC on relevant conclusions and observations of the United Nations human rights treaty bodies and special procedures. It participated in the follow-up conference to the CTC Special Meeting with Regional Organizations, hosted by the Organization for Security and Cooperation in Europe (OSCE) in cooperation with the United Nations Office on Drugs and Crime (UNODC) in Vienna in March 2004, as well as a meeting on developing an action agenda for the CTC, hosted by the Ministry for Foreign Affairs of Denmark and organized by the Fourth Freedom Forum and the Joan B. Kroc Institute for International Peace Studies in Copenhagen in March 2004.

7. OHCHR, a number of States (including members of the Security Council), the United Nations Human Rights Committee and non-governmental organizations (NGOs) have urged CTC to consider the human rights impact of counter-terrorism measures in its review of State action. As part of the revitalization of CTC, proposed by the Committee in its report (S/2004/124, annex) and approved by the Security Council in resolution 1535 (2004) of 26 March 2004, CTC is to "liaise with the Office of the United Nations High Commissioner for Human Rights and other human rights organizations in matters related to counter-terrorism" (ibid., para. 16 (c)). The High Commissioner for Human Rights has initiated discussion with the new Executive Director of the CTC Executive Directorate (CTED), Javier Rupérez, on ways to implement the liaison anticipated in the Committee's revitalization. As a first step, CTED advised OHCHR in September 2004 that it is the Executive Director's intention to include among his staff an expert on human rights, humanitarian law and refugee law, including for the purpose of liaising with OHCHR and other human rights organizations.

III. Office of the United Nations High Commissioner for Human Rights

8. The Secretary-General has consistently condemned all acts of terrorism. At the same time, he has systematically appealed for States to ensure that counter-terrorism measures are consistent with human rights obligations. As he recently reiterated, "Terrorism strikes at the very heart of everything the United Nations stands for. It is a global threat to democracy, the rule of law, human rights and stability, and therefore requires a global response. The United Nations has an indispensable role to play in providing the legal framework within which the international campaign

against terrorism can unfold ... As we join forces against terrorism, it is imperative that all of us work to uphold and protect the dignity of individuals and their fundamental freedoms, as well as democratic practices and the rule of law".[1]

9. In an address entitled "Security under the rule of law", delivered to the Biennial Conference of the International Commission of Jurists (ICJ) in Berlin on 27 August 2004, the High Commissioner for Human Rights, Louise Arbour, stated her view that over the long term, "a commitment to uphold respect for human rights and rule of law will be one of the keys to success in countering terrorism — not an impediment blocking our way".[2] The High Commissioner surveyed recent court rulings and other legal developments related to the protection of human rights while countering terrorism. While stressing that States have not only the right, but also the duty to secure the right to life and other human rights through effective counter-terrorism measures, she also highlighted the central role of the judiciary in reviewing such measures taken by Governments. She said, "Put bluntly, the judiciary should not surrender its sober, long-term, principled analysis of issues to a call by the executive for extraordinary measures grounded in information that cannot be shared, to achieve results that cannot be measured".

10. In her speech, the High Commissioner said that respect for human rights and the rule of law in action to counter terrorism actually works to improve human security. She recalled that international human rights law makes ample provision for effective counter-terrorism action, even in the most dire of circumstances. She said, "Article 4 of the International Covenant on Civil and Political Rights was crafted precisely to afford States the leeway they would need to deal with truly exceptional situations while remaining within a legal framework. Its provisions are for exceptional situations only, namely, those in which 'the life of the nation' is threatened. In such situations a State may take emergency measures, provided they are limited to the extent strictly required by the exigencies of the situation, are not inconsistent with the State's other international obligations, and do not discriminate on specified grounds. Certain rights are never subject to derogation, regardless of the nature of the emergency". The High Commissioner reiterated the relevance of the Human Rights Committee's general comment No. 29 on states of emergency, including its emphasis on the importance of remedies for violations of provisions of the International Covenant on Civil and Political Rights (ICCPR).[3]

11. As is made clear by provisions of ICCPR and regional human rights instruments, in the exceptional circumstances where it is permitted to limit some rights for legitimate and defined purposes other than emergencies, the principles of necessity and proportionality must still be applied. Measures taken must be appropriate and the least intrusive possible to achieve their objective. The discretion granted to certain authorities to act must not be unfettered. The principle of non-discrimination must always be respected and special effort made to safeguard the rights of vulnerable groups. Counter-terrorism measures targeting specific ethnic or religious groups are contrary to human rights and would carry the additional risk of an upsurge of discrimination and racism.[4]

12. OHCHR initiated a project in 2003 which provides support to the High Commissioner and the United Nations human rights mechanisms by examining human rights issues related to counter-terrorism measures and taking other action as mandated by the General Assembly and the Commission on Human Rights. The "Digest of Jurisprudence", published in 2003, has been distributed widely, including

to the national affiliates of the International Bar Association and to participants at the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Forum on Human Rights, held at Nantes, France, in May 2004. Opportunities for partnerships with other United Nations bodies and regional organizations in providing technical assistance and advice to States on the issue are currently being explored. A partnership has been established with OSCE to develop relevant educational materials. The Office has also begun providing support to the newly appointed independent expert of the Commission on Human Rights on the protection of human rights while countering terrorism.

13. In September 2004, OHCHR helped to organize and participated in the Seventh International Conference of National Human Rights Institutions, held in Seoul, which had as its theme "Upholding human rights during conflict and while countering terrorism". At the UNESCO World Forum on Human Rights, the Office organized a panel discussion with representatives of national human rights institutions on the protection of international human rights while countering terrorism.

IV. Special procedures and treaty bodies

14. The United Nations human rights special procedures and treaty bodies continue to pay close attention to the protection of human rights and fundamental freedoms while countering terrorism, within their respective mandates and resources. In a joint statement issued on 25 June 2004 (E/CN.4/2005/5, annex), the special rapporteurs and representatives, independent experts and chairpersons of the working groups of the special procedures reiterated their concerns expressed a year earlier regarding the serious impact that certain counter-terrorism measures may have on the enjoyment of human rights and fundamental freedoms. The statement continued, "[The special procedures] once again strongly voice their unequivocal condemnation of terrorism in all its forms. At the same time, they reaffirm their individual and collective determination to monitor, each within the framework of his or her mandate, those policies, legislation, measures and practices developed by States in the name of the fight against terrorism, with a view to ascertaining that they are consistent with international human rights standards".

15. Referring to "a number of recent developments that have seriously alarmed the international community with regard to the status, conditions of detention and treatment of prisoners in specific places of detention", the special procedure mandate-holders expressed their unanimous desire that the Special Rapporteurs on the independence of judges and lawyers, on the question of torture and on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as well as the Chairperson of the Working Group on Arbitrary Detention, "visit, together and at the earliest possible date, those persons arrested, detained or tried on grounds of alleged terrorism or other violations, in Iraq, Afghanistan, the Guantánamo Bay military base and elsewhere, with a view to ascertaining, each within the confines of their mandate, that international human rights standards are properly upheld with regard to these persons, and also to make themselves available to the authorities concerned for consultation and advice on all issues within their areas of competence". They further expressed the wish that they would be able to present the outcome of their approaches and visits to the Commission on Human Rights at its sixty-first session.

16. Several of the special procedures have continued to consider issues related to the protection of human rights and fundamental freedoms while countering terrorism in the course of their work and in their reports to the General Assembly and the Commission on Human Rights. In reports to the sixtieth session of the Commission, aspects of counter-terrorism measures were addressed by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2004/18, E/CN.4/2004/19), the Special Rapporteur on the question of torture (E/CN.4/2004/56 and Add.1-3), the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2004/7), the Special Rapporteur on the independence of judges and lawyers (E/CN.4/2004/60), the Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2004/62), the Special Rapporteur on freedom of religion or belief (E/CN.4/2004/63), the Special Rapporteur on violence against women (E/CN.4/2004/66), the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2004/80 and Add.3), the Special Rapporteur on the use of mercenaries (E/CN.4/2004/15), the Special Representative of the Secretary-General on the situation of human rights defenders (E/CN.4/2004/94), the Working Group on Arbitrary Detention (E/CN.4/2004/3), and the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2004/58).

17. Several of the human rights treaty bodies have continued to address the protection of human rights while countering terrorism in their review of States parties' reports under the respective treaties. The Human Rights Committee now routinely considers the compatibility of counter-terrorism measures with ICCPR obligations in reviewing State party reports and has addressed the issue in several recent concluding observations. For example, it has again drawn the attention of States parties to the issue of the legal definition of terrorism in national legislation and the obligation to respect the principle of legality.[5] The Committee has also expressed concern over the possible impact of counter-terrorism measures on the right to freedom from discrimination,[6] the right to a legal remedy and protection from refoulement,[7] and the rights to personal liberty and security, due process, and privacy.[8]

18. The Committee against Torture,[9] the Committee on the Elimination of Racial Discrimination[10] and the Committee on the Rights of the Child[11] have also recently addressed aspects of the protection of human rights while countering terrorism.

V. Conclusions and recommendations

19. **The continuing threat of terrorism as well as the importance of ensuring respect for human rights while countering terrorism remain matters of major concern worldwide. In a reflection of this, the United Nations special procedures again made it the theme of a joint statement issued at their annual meeting, held in Geneva on 25 June 2004. While strongly voicing their unequivocal condemnation of terrorism in all its forms, they reaffirmed their determination to monitor, each within the framework of his or her mandate, those policies, legislation, measures and practices developed by States in the name of the fight against terrorism, with a view to ascertaining that they are consistent with international human rights standards. A number of recent international conferences have considered the subjects of terrorism and counter-terrorism in depth.[12] Calls by international bodies, including the**

Security Council, the General Assembly and the Commission on Human Rights, as well as regional organizations, for counter-terrorism measures to conform to international law, in particular international human rights, refugee and humanitarian law, continue to be highly relevant.

20. The United Nations human rights mechanisms and treaty bodies, as well as the High Commissioner for Human Rights, have provided additional clarification of the international human rights foundation on which counter-terrorism action must be based. This includes full respect for the principles of necessity and proportionality at all times, for the non-derogability of certain rights even in time of national emergency, and for the role of the courts and national human rights institutions in ensuring the compatibility of national counter-terrorism measures with national and international human rights obligations.

21. OHCHR is continuing its dialogue with the Security Council's Counter-Terrorism Committee with the aim of identifying ways to deepen cooperation. The provision of the CTC revitalization plan calling for liaison between CTC, OHCHR and other human rights organizations in matters related to counter-terrorism requires further elaboration.

22. The United Nations human rights special procedures and treaty bodies remain vigilant concerning the protection of human rights while countering terrorism, and several of them continue to address the issue regularly within the scope of their mandates. It may be hoped that the appointment in July 2004 of an independent expert for a period of one year to assist the High Commissioner in this area and to submit a report, through the High Commissioner, to the Commission on Human Rights at its sixty-first session on ways and means of strengthening the promotion and protection of human rights and fundamental freedoms while countering terrorism will lead to a more integrated and coherent understanding of this important issue.

Notes

[1] Message of the Secretary-General to a meeting of the Regional Counter-Terrorism Structure Executive Committee of the Shanghai Cooperation Organization, Tashkent, 17 June 2004.

[2] http://www.unhchr.ch/huricane/huricane.nsf/NewsRoom?OpenFrameSet.

[3] Human Rights Committee, general comment No. 29 (CCPR/C/21/Rev.1/Add.11), para. 14.

[4] E/CN.4/2004/91, para. 20.

[5] CCPR/CO/81/BEL (Belgium); CCPR/CO/80/UGA (Uganda).

[6] CCPR/CO/80/DEU (Germany).

[7] CCPR/CO/80/LTU (Lithuania).

[8] CCPR/CO/80/COL (Colombia).

[9] CAT/C/CR/32/4 (New Zealand); CAT/C/CR/31/1 (Colombia); CAT/C/CR/31/2 (Morocco); CAT/C/CR/31/4 (Yemen).

[10] CERD/C/65/CO/3 (Kazakhstan); CERD/C/64/CO/8 (Sweden).

[11] CRC/C/15/Add.228 (India).

[12] For example, the Biennial Conference of the International Commission of Jurists, "Human Rights and Counter-Terrorism: Challenges and Responses", Berlin, 27-29 August 2004.